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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. _____

BECKLEY NEWSPAPERS CORPORATION, *Petitioner*

v.

C. HAROLD HANKS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

Petitioner, Beckley Newspapers Corporation, prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Wyoming County, West Virginia, entered in the above-entitled case.

OPINIONS BELOW

The Circuit Court of Wyoming County, West Virginia, did not write an opinion. In denying petitioner's three petitions seeking review of the circuit court judgment, the Supreme Court of Appeals of West Virginia did not write an opinion.

JURISDICTION

The judgment of the Circuit Court of Wyoming County sought to be reviewed was entered on June 25, 1966. See Order of June 25, 1966, Appendix A. The judgment was made final by an order of the Supreme

Court of Appeals of West Virginia entered May 12, 1967, refusing for the third time to review the judgment of the circuit court; two judges voted to hear the case. See Order of May 12, 1967, Appendix B. Under these circumstances, the Writ of Certiorari runs to the trial court. See *American Ry. Exp. Co.* v. *Levee*, 263 U.S. 19 (1923); Stern & Gressman, *Supreme Court Practice* 88 (3d ed. 1962). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257. The judgment of the circuit court violates the rights of petitioner guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

1. Does a libel judgment against petitioner in favor of a public official deprive petitioner of its constitutional rights where the record contains no evidence of actual malice as defined by this Court?

2. Does a state court's instruction to a jury that it can return a libel verdict against petitioner in favor of a public official without any finding of actual malice, as defined by this Court, deprive petitioner of his constitutional rights?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

Amendment I:

"Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."

Amendment XIV:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE[1]

Respondent C. Harold Hanks, Clerk of the Criminal and Circuit Courts of Raleigh County, West Virginia since 1956, brought a suit for libel against petitioner and recovered judgment for $5,000 on a jury verdict. The judgment against petitioner is in clear violation of the letter and spirit of *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), and succeeding cases.[1] The record is devoid of evidence of actual malice; and the case was given to the jury under an instruction held to be improper by this Court in *Rosenblatt* v. *Baer*, 383 U.S. 75 (1966).

The petitioner, a corporation, owns two newspapers in Beckley, Raleigh County, West Virginia. The afternoon newspaper, *The Raleigh Register*, is Democratic. The morning paper, the *Beckley Post-Herald*, which printed the alleged libelous editorials, is Republican. Petitioner's newspapers have a history of active and vigorous comment on matters of local political importance. George Warren Hodel, president and general manager of petitioner, testified that it has been the long-term policy of the corporate management to encourage the editors of each paper to give its readers independent appraisals of office holders and candidates for public office. (Transcript 97-99.)[2]

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[1] *Curtis Publishing Co.* v. *Butts*, 87 S. Ct. 1975 (1967); *Time, Inc.* v. *Hill*, 385 U.S. 374 (1967); *Rosenblatt* v. *Baer*, 383 U.S. 75 (1966); *Linn* v. *United Plant Guard Workers of America*, 383 U.S. 53 (1966); *Henry* v. *Collins*, 380 U.S. 356 (1965); *Garrison* v. *Louisiana*, 379 U.S. 64 (1964).

[2] Record, Transcript in *Hanks* v. *Beckley Newspapers Corporation*, Civil Action No. 16061, Circuit Ct., Wyoming County, West Virginia, May 31-June 1, 1966. [Hereinafter cited as "Tr."]

I. The Evidence Adduced at Trial

The *Post-Herald* had run two editorials critical of respondent during 1960 and 1961 on two substantive matters: his opposition to the fluoridation of the water in the Beckley area, and his use of his influence to have a road to his house paved by the state.[3] Nonetheless, the paper conceded that respondent had done a "reasonably good job as clerk of our courts." (Tr. 30.)

When respondent announced his intention to run for re-election in 1962, the *Post-Herald* ran three editorials commenting on his candidacy. Respondent charged that these three editorials published during the campaign contain libelous material.[4] The first was published on January 16, 1962, entitled "Hanks Will Come To See You Every Six Years!" The portion of this editorial containing the alleged libel is as follows:

> "A dispatch in the Sunday Post-Herald and Raleigh Register quoted C. Harold Hanks to the effect that he planned to resole his shoes in preparation for a door-to-door campaign in hopes of being renominated as circuit clerk.
>
> "We didn't think that this was going to be necessary; we understood that Clerk Hanks had managed to get the state to pave a virtually private road to his doorway.

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[3] The complete text of these two editorials is set out in Appendix D attached to this petition. The uncontradicted testimony establishes that respondent did use his influence to have the road paved (Tr. 55A-68) and that he was an outspoken opponent of fluoridation of the community's water. (Tr. 55.)

[4] The complete text of these three editorials is set out in Appendix D attached to this petition.

"We were had to believe that he could get out by automotive power now and wouldn't have to go on foot.

". . . .

"And speaking more personally, we won't mind at all if he spares us the worn-out brogan and grubby paw act! We weren't impressed the last time around. And repetition doesn't lend enchantment. Distance does, Mr. Clark." (App. C, pp. 4a-5a.)

Respondent charged that the above statement that he "managed to get the state to pave a virtually private road to his doorway" was libelous per se in that it implied he had misused his office for private gain. Respondent did not dispute the fact that he made vigorous efforts to get the road paved. (Tr. 65-A.)

Respondent, who had conducted a house-to-house handshaking campaign in 1956 (Tr. 29, 79), further charged the above edit rial reference to the "worn-out brogan and grubby paw act" was libelous per se because it carried the innuendo that respondent "had dirty and grimy hands which he would repulsively inflict upon other people by a handshaking campaign." Record, p. 15.

The second alleged libel was contained in an editorial entitled "The Fluoridation Situation Remains Unchanged" in the *Post-Herald* on September 4, 1962. It criticized respondent for his opposition to the fluoridation of the city's water supply in the following language:

"About the middle of last month we wrote here at some length about the situation in regard to Beckley's water supply and the failure of thou-

sands of Raleigh County children to gain the considerable benefits of fluoridation.

"Admittedly, we romped pretty heavily upon Circuit Clerk Harold Hanks and Mrs. Elinor Hurt, president of the Raleigh County Board of Health. We thought it was something they deserved. We still do. [The editorial referred to in the above text is not in the record.]

"We did not hear anything directly from either of the two denizens of the Raleigh County Courthouse. But indirectly we got the word of their displeasure. One way or another, word of this sort of thing always gets around.

". . . .

"She [Mrs. Hurt] pleads that she is not a political power, and that because she receives no pay for some of these jobs she should not be subject to criticism concerning them.

"Here, again, she seems to want to follow in the footsteps of Hanks. For it was Hanks who ordered over the telephone once that he did not want his name to appear in the Beckley Post-Herald again. He backed up this order with an inexplicit threat —one merely intended to frighten those who are easily intimidated.

"The only conclusion to which we can come is that either Hanks and Mrs. Hurt have been in league toward the fanatic end, believing all the wild-eyed ravings against fluoridation despite decades of experience to disprove them, or that perhaps his blustering threats were able to intimidate the lady." (App. C, pp. 5a-6a.)

Respondent charged that this editorial is libelous on the theory that it attributed to him a propensity for threats and intimidation. Respondent denied he intended to threaten the editor of the *Post-Herald*. He

admitted, however, calling the editor on a Sunday morning and telling him "I felt like I was being severely criticized and I did not appreciate that as an office holder." (Tr. 58-59.) He also admitted that he asked petitioner's editor to meet him in the "city's parking lot in front of" the petitioner's office "to discuss this situation to prevent any further such editorials." (Tr. 59.)

The third editorial, published November 5, 1962, on which the respondent bases his suit for libel is entitled "As We See the Men, Issues To Be Decided." It makes recommendations and offers opinions with respect to all the candidates in the election. Its comments on respondent, which are not prominently placed in the editorial, are as follows:

> "We cannot make any real case for Emery E. James of Cirtsville to be a topnotch circuit clerk, but the incumbent, C. Harold Hanks, makes him look good nevertheless. Hanks has made it clear that he cares not at all about our children in delaying needed fluoridation of the local water supply by two years or more. He has also been reported as saying he would fight it further after the election.
>
> "Hanks is really a rather unsavory character." (App. C, p. 9a.)

The respondent alleged that the last phrase caused his "neighbors and other good and worthy citizens . . ." to "suspect and believe, the plaintiff [respondent Hanks] to have been and to be, physically unclean; and to have been, and to be, morally offensive and a person to be avoided or abhorred. . . ." (Record, p. 17.)

This Court has stated that a public official cannot recover damages "for a defamatory falsehood relating

to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times* v. *Sullivan*, 376 U.S. at 279-80. The definition of actual malice has been subsequently refined to permit recovery only where the evidence affirmatively established that the publisher was aware of the falsity or probable falsity of the facts stated.[5] *Garrison* v. *Louisiana*, 379 U.S. 64, 75 (1964); *Curtis Publishing Co.* v. *Butts*, 87 S. Ct. 1975 (1967).

The complaint itself does not even allege that petitioner published its statements about respondent with actual malice as defined by the Court. For this reason, defendant moved for judgment on the pleadings prior to the trial. The motion was denied by the trial court. On May 31, 1966, at the beginning of the trial, petitioner's motion for summary judgment on the same ground was denied. (Tr. 8-9).

The trial record does not contain a scintilla of evidence that petitioner's editorials were written with

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[5] When a public official is involved, proof of negligence is insufficient under *New York Times*. *Cf. Curtis Publishing Co.* v. *Butts*, 87 S. Ct. 1975 (1967). The "actual malice" which must be shown is not equivalent to "unreasonableness" of the publisher's belief in the truth of his statements:

> "The reasonable-belief standard applied by the trial judge is not the same as the reckless-disregard-of-truth standard . . . . The test which we laid down in *New York Times* is not keyed to ordinary care; defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth." *Garrison* v. *Louisiana*, 379 U.S. 64, 79 (1964).

Nor does the fact that an investigation might have shown that the statement was false make the publisher liable. See *New York Times* v. *Sullivan*, 376 U.S. at 282, 287.

actual malice as defined by the Court. On the contrary, the president of petitioner explained the careful manner in which editorials were prepared. (Tr. 124.)

The testimony offered by respondent can be briefly summarized. He introduced the three editorials which he claimed were libelous per se. The sole evidence which respondent offered at trial relating to malice was two other editorials published in 1960 and 1961.* (Tr. 20.) These editorials criticized petitioner on precisely the same grounds as the editorials which are the basis of this suit, *i.e.*, that respondent was using the influence of his position to get a road built to his doorway and to oppose fluoridation of the city water supply.

The editorials were admitted over objection

> "for the limited purpose of showing the state of mind of the composer of the articles complained of as the subject matter of this suit." (Tr. 28.)

The theory of the trial court appears to be that prior criticism of respondent's conduct may be used to show that subsequent criticism on identical grounds was malicious.

In addition to the submission of the written documents above cited, respondent and one other witness testified. Respondent admitted that he had used his influence to have the road to his house paved. (Tr. 52.) He also admitted that he had publicly and actively opposed fluoridation. (Tr. 53-55.) He claimed that neither of these activities had been carried on in his official capacity. (Tr. 50, 56.)

The balance of respondent's testimony consists of vague generalizations as to the extent of his injury.

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* See text of these two editorials, Appendix D, p. 11a.

He insisted that the editorials subjected him to public abuse, although he was unable to name anyone who had abused him. (Tr. 80-81.) Nonetheless, he was re-elected after the editorials appeared by a greater majority than in his previous election which was held before publication of the editorials. (Tr. 82-83.)

The other witness for respondent was Mrs. Hurt, President of the Raleigh County Board of Health, who also opposed fluoridation. She testified that she had never been threatened by respondent. But her testimony did not suggest that Petitioner knew or should have known that this was the case. Moreover, petitioner's editorial of September 4, 1962, stated only that she *might have* received intimidating threats from respondent. (App. C, p. 6a.)

None of the testimony offered by respondent is even *relevant* to proving "actual malice" as defined by the decisions of this Court in cases involving liability for criticism of a public official. At the close of respondent's case, petitioner moved for a directed verdict (Tr. 91-93), renewing the motion at the end of its own case. (Tr. 128.) Petitioner relied on *New York Times* v. *Sullivan* and pointed to the total absence of evidence of actual malice.[6] Both motions were denied, and the case was submitted to the jury.

II. The Charge to the Jury

The charge to the jury was clearly erroneous under the *New York Times* and subsequent decisions. This Court has reversed a number of similar cases because of the inadequacy of the jury instructions.[7]

The court gave several instructions in general terms informing the jury that malice was required in order

[7] See footnote 9, *infra*.

to make a defendant liable for defamation of public officials. But the only instruction given with respect to what constitutes malice was plaintiff's instruction number three which reads, in part, as follows:

> "However, even if the words complained of are libelous per se, and are false, before a plaintiff can recover you must believe from the evidence that they were published with malice—and in this case, malice means that the publisher knew them to be false or used them with reckless disregard of whether they were true or false, *or used them with bad or corrupt motive.*
>
> "Applying these principles more clearly to this case, you, the jury, are hereby instructed that the language complained of by the plaintiff, Harold Hanks, is libelous per se; that it was used by the Beckley Newspaper Corporation upon a public occasion in commenting upon matters of public interest and that this was a privileged occasion; that nevertheless the plaintiff, Hanks, is entitled to recover damages from the defendant herein and you should find your verdict for him, if you believe from the evidence that the charges or statements complained of were false and that the publisher at the time knew they were false or published them with reckless disregard of whether they were true or false *or published them with hatred, or revenge, or from personal spite, ill will or a desire to injure plaintiff.* And if you the jury so believe it is no defense that they were published in an election year or in an election campaign or that the plaintiff was a public official." (Tr. 133-34.) [Emphasis supplied.]

Petitioner objected to this instruction, citing *New York Times* v. *Sullivan*. (Tr. 131.) This instruction is in direct contradiction to the controlling authorities of this Court on the issue of liability for criticism of a public official. See cases cited, n. 1, *supra*.

The jury returned a verdict for respondent for $5,000. Petitioner's motion to have the jury's verdict set aside was denied.

Petitioner sought review in the Supreme Court of West Virginia three times. Petitioner fully argued that the decisions of this Court required review of previous West Virginia decisions; that there was no evidence presented in the circuit court of actual malice as defined by this Court; and that the charge to the jury improperly stated the definition of actual malice. Respondent filed no brief in opposition. The Supreme Court of West Virginia refused to hear the case.[8]

REASONS FOR GRANTING THE WRIT

Although there are no written opinions below, this case is in fact a repudiation by the Supreme Court of West Virginia of the rulings of this Court. The trial judge permitted the case to go to the jury despite the complete absence of evidence of actual malice as the term has been defined by this Court, and the case was given to the jury under a totally improper instruction. Nonetheless the Supreme Court of West Virginia refused to hear the case. If this Court permits this judgment to stand, its decision in *New York Times* v. *Sullivan, supra*, will be a dead letter in West Virginia.

The issues involved in this case are at the very core of those rights of expression which the *New York*

[8] In West Virginia there is no appeal as of right. "A writ of error, supersedeas, or appeal shall be allowed only by the supreme court of appeals, or a judge thereof, upon a petition assigning error in the judgment or proceedings of the inferior court and then only after said court or judge shall have examined and considered the record and assignment of errors, and is satisfied that there is error in the same, or that it presents a point proper for the consideration of the supreme court of appeals." W. Va. Const. Art. 8, § 6.

Times doctrine was intended to foster and protect. Here a newspaper criticized a public official seeking re-election, on the grounds that he had abused the influence of his position to further his private convenience and also because while in office he had actively and aggressively opposed local measures which the editor thought vital to the public health of the community.

The objection of the official in this case was that he felt he "was being severely criticized and . . . did not appreciate that as an office holder." (Tr. 58-59.) In looking for a way "to prevent any further such editorials" (Tr. 59), he struck on the libel laws. The use of the libel laws by public officials to silence editorial critics is plainly unconstitutional under the decisions of this Court. Petitioner was deprived of its constitutional rights simply because the *New York Times* doctrine was ignored by the trial court and the Supreme Court of West Virginia.

I. The Absence of Evidence of Actual Malice

Respondent offered *no evidence* that petitioner acted with "actual malice," that is, a knowing resort to falsehood or a total disregard for the probable falsity of the material published. Despite petitioner's objections, the case was actually tried by respondent, given to the jury, and decided as if it were an ordinary libel suit against a private individual, contrary to the repeated rulings of this Court in cases involving criticism of a public official.

In permitting this case to go to the jury, the trial court indicated that even the mildest editorial criticism, such as the sarcastic references to the methods used by respondent in campaigning for office, is subject to the penalty of libel. The rough-and-tumble

political campaigns envisaged by this Court in *New York Times*—involving "[c]harges of gross incompetence, disregard of the public interest, communist sympathies . . .," 376 U.S. at 273, n. 14—dramatically illustrate how far *within* the limitations of constitutionally-protected political disclosure petitioner's editorials were.

This Court in *New York Times* narrowly defined "actual malice." Subsequent decisions have refined it still further. In *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964), this Court held that in order to constitute actual malice in defamation of a public official, there must be affirmative proof that that defendant was guilty of a "calculated falsehood" or that he had a high degree of awareness of probable falsity. And in *Henry* v. *Collins*, 380 U.S. 356, 357 (1965), this Court held that a speaker must have "*intent to inflict* harm through falsehood."

The latest opinion on this issue by this Court is *Curtis Publishing Co.* v. *Butts*, 87 S. Ct. 1975 (1967). In that case, Justice Harlan, speaking for four justices, recognized that the requirement of malice might be less in a case where the plaintiff is a prominent public figure rather than a public official. In the former case, there might be a duty to make a reasonable investigation of the truth of the statement made. But in the case of a public official, as Justice Harlan's opinion, 87 S. Ct. at 1990-91, emphatically reiterated, the rule in *Garrison* limits recovery

> "to those cases where 'calculated falsehood' placed the publisher 'at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected.' Garrison v. State of Louisiana, 379 U.S. 64, 75, 85 S. Ct. 209, 216, 13 L.Ed. 2d 125.

> That is to say, such officials were permitted to recover in libel only when they could prove that the publication involved was deliberately falsified, or published recklessly despite the publisher's awareness of probable falsity. Investigatory failures alone were held insufficient to satisfy this standard. See New York Times, 376 U.S., at 286-288, 292, 84 S. Ct. at 729-730, 732; Garrison v. State of Louisiana, supra, at 73-75, 79, 85 S. Ct. at 215-216, 218."

The Chief Justice differed with Justice Harlan only on the question of whether public officials and public figures should be treated differently. The dissenting opinions in *Curtis* would unquestionably require a reversal of the verdict in this case.

Although there is no opinion by the state court in this case, this Court has held that where the first amendment right to comment on the activities of public officials is involved, it will read the record and review the evidence. As Justice Brennan said in *New York Times* v. *Sullivan*:

> "This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. This is such a case, particularly since the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated.' Speiser v. Randall, 357 U.S. 513, 525, 2 L.Ed. 2d 1460, 1472, 78 S. Ct. 1332. In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' Pennekamp v. Florida, 328 U.S. 331,

335, 90 L.Ed. 1295, 1297, 66 S. Ct. 1029; see also One, Inc. v. Olesen, 355 U.S. 371, 2 L.Ed. 2d 352, 78 S. Ct. 364; Sunshine Book Co. v. Summerfield, 355 U.S. 372, 2 L.Ed. 2d 352, 78 S. Ct. 365. We must 'make an independent examination of the whole record,' Edwards v. South Carolina, 372 U.S. 229, 235, 9 L.Ed. 2d 697, 702, 83 S. Ct. 680, so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." 376 U.S. at 285.

Chief Justice Warren, concurring in *Curtis Publishing Co.* v. *Butts*, 87 S. Ct. 1975, 1998 (1967), reiterated that principle:

> "We must review the evidence to ascertain whether the judgment can stand consistently with those principles. New York Times v. Sullivan, 376 U.S. 254, 285, 84 S. Ct. 710, 728 (1964); Speiser v. Randall, 357 U.S. 513, 525, 78 S. Ct. 1332, 1341, 2 L.Ed. 2d 1460 (1958)."

That this case squarely fits into the category of cases in which this Court must review the record cannot be questioned. The record shows an unconstitutional limitation placed upon petitioner's rights under the first and fourteenth amendments, a limitation which will operate as a continuing bar to free debate on the activities of public officials in West Virginia until the judgment for respondent is reversed by this Court.

II. The Erroneous Charge to the Jury

The charge to the jury was unquestionably erroneous on the most critical issue—the definition of "actual malice." This Court has recognized its obligation to scrutinize jury charges to insure implementation of the *New York Times* doctrine.[9] The trial court charged

[9] *Henry* v. *Collins*, 380 U.S. 356 (1965); *Rosenblatt* v. *Baer*, 383 U.S. 75 (1966); *Time, Inc.* v. *Hill*, 385 U.S. 374 (1967).

the jury that it could return a verdict for respondent if it found that the statements complained of were published with malice. It stated, over petitioner's objection, that "malice means that the publisher knew them to be false or used them with reckless disregard of whether they were true or false, *or used them with bad or corrupt motive.*" [Emphasis supplied.] (Tr. 133.) In further elaboration, the court defined malice as encompassing statements published "with hatred, or revenge, or from personal spite, ill will or a desire to injure plaintiff." (*Ibid.*) This instruction is flatly inconsistent with this Court's decisions. It would permit recovery by a public official for the publication of material which the publisher reasonably thought was true if the jury believed that the publisher entertained ill will against the official.

This Court's decision in *Rosenblatt* v. *Baer*, 383 U.S. 75, 84 (1966) considered and squarely rejected an instruction essentially the same as the instruction given in this case. There the plaintiff had been awarded a jury verdict in a libel case tried before the *New York Times* decision. In reversing, the Court held that instructions by the lower court which defined malice to include "ill will, evil motive, intention to injure . . ." were "constitutionally insufficient where discussion of public affairs is concerned."

The policy behind this Court's narrow definition of "actual malice," a definition which excludes ill will or hatred, was elaborated in *Garrison* v. *Louisiana*:

> "Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. Under a rule like

> the Louisiana rule, permitting a finding of malice based on an intent merely to inflict harm, rather than an intent to inflict harm through falsehood, 'it becomes a hazardous matter to speak out against a popular politician, with the result that the dishonest and incompetent will be shielded.' Noel, Defamation of Public Officers and Candidates, 49 Col. L. Rev. 875, 893 (1949). Moreover, '[i]n the case of charges against a popular political figure . . . it may be almost impossible to show freedom from ill-will or selfish political motives.' *Id.* at 893, n. 90." 379 U.S. at 73-74.

The trial court's charge to the jury is patently inconsistent with this Court's decisions. This gross error, together with the Supreme Court of West Virginia's refusal even to hear the case, consitutes a total repudiation of the *New York Times* and *Garrison* decisions.

If the verdict in this case is permitted to stand, petitioner's newspaper can no longer engage in the frank appraisal of the qualifications of candidates for local office in West Virginia through the publication of honest editorial opinion. This is dramatized by the fact that after judgment was rendered in this case, another suit was filed against petitioner's newspaper based on similar honest criticism of the mayor of Beckley. The damages sought in that case are $75,000. A copy of the complaint in that suit is attached.[10]

This Court has stated:

> "Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice

[10] See Appendix B, p. 18a. Indeed, a reading of that complaint shows that the editorials made the subject of libel are far less invidious in their criticism of the mayor than in any of the cases where criticism of a public official has been held immune from libel by this Court.

to public criticism is an atmosphere in which the First Amendment freedoms cannot survive." *New York Times* v. *Sullivan*, 376 U.S. at 278.

Petitioner is a small newspaper corporation with limited financial resources. As a result of the precedent set by this case, petitioner cannot engage even in mild criticism of the public officials of its county without the constant fear of other libel suits in addition to the case recently filed. Petitioner simply cannot afford under these circumstances to make independent comments on the qualifications of candidates for office and public officials. Unless this case is reversed, respondent will have succeeded in his stated objective: "to prevent any further such editorials." (Tr. 59.)

CONCLUSION

For the reasons set forth herein, this Petition for a Writ of Certiorari should be granted. Petitioner respectfully urges this Court to reverse summarily the judgment of the Circuit Court of Wyoming County concurrently with its issuing the Writ of Certiorari.

Respectfully submitted,

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